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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MAR 01 1996

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DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
DISTRICT-OF UTAH, CENTRAL DIVISION

DATABASE SERVICE
MANAGEMENT, INC.,
a New Jersey Corporation,

Plaintiff,

v.

BEEHIVE TELEPHONE COMPANY,
INC.,
a Utah Corporation,

Defendant.

COMPLAINT

2:96CV 0188C

Civil No. _____

Judge _____

Plaintiff Database Service Management, Inc., by and through its undersigned attorney, Floyd A. Jensen, complains of Defendant Beehive Telephone Company, Inc. as follows:

1. Plaintiff Database Service Management, Inc. ("DSMI") is a New Jersey corporation which has its principal place of business in New Jersey. DSMI is a wholly owned subsidiary of Bell Communications Research, Inc. ("Bellcore"), a Delaware corporation that is jointly owned by the Bell Operating Companies, which include the Ameritech Operating Companies; the Bell Atlantic Telephone Companies; BellSouth Telecommunications, Inc.; Southwestern Bell Telephone Company; the NYNEX Telephone

Companies; Pacific Bell and Nevada Bell; and U S WEST Communications, Inc.

2. Defendant Beehive Telephone Company, Inc. ("Beehive") is a Utah corporation which has its principal place of business in Utah and in this judicial district.

3. This action involves a claim or claims for service provided to Beehive under tariffs filed with the Federal Communications Commission ("FCC"); accordingly, this action arises under the laws of the United States and this Court has subject matter jurisdiction under 28 U.S.C. § 1331.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391.

5. At all material times, the Bell Operating Companies jointly offered for sale to the public a set of services known as 800 Service Management System ("SMS/800"), under a tariff filed with the FCC pursuant to its regulatory authority under the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., and in compliance with the FCC's ruling in an administrative proceeding known as the CompTel Declaratory Ruling, Provision of Access for 800 Service, 8 FCC Rcd. 1423 (1993). The tariff is known as the 800 Service Management System (SMS) Functions Tariff No. 1 ("SMS/800 Tariff").

6. SMS/800 is a computer-based system that manages the assignment and use of "800" numbers (i.e. telephone numbers that can be dialed in the format 1-800-xxx-xxxx, with the toll charges being assessed to the called party). SMS/800 allows "800" numbers to be portable among

service providers, such that a subscriber to "800" service may keep the same "800" number regardless of the carrier used to provide the "800" service. The SMS/800 database contains service information associated with each "800" number, including the identity of the carrier selected by the customer for each number.

7. As agent for the Bell Operating Companies, DSMI administers the SMS/800 system pursuant to a contract between DSMI and the Bell Operating Companies. One of DSMI's obligations and rights under that contract is to "collect payments from customers purchasing access to the SMS/800."

8. At all material times, Beehive was a Responsible Organization, as defined in the SMS/800 Tariff, and as such was permitted to reserve "800" numbers, to create and modify customer records in the SMS/800 main database, and to obtain various reports from the SMS/800 database, all under the terms and at the rates specified in the SMS/800 Tariff. As a Responsible Organization, Beehive was also responsible for entering into the SMS/800 database the required information concerning the "800" numbers which it had reserved, and for maintaining the accuracy of such information. Beehive reserved approximately 10,000 "800" numbers in the SMS/800 database.

9. Beehive, under its unique Responsible Organization identification number BHV 01, has subscribed to various services offered under the SMS/800 Tariff, and, accordingly, has received access to the

SMS/800 system and various services under the SMS/800 Tariff, including SMS/800 access and customer record administration.

10. DSML, as agent for the Bell Operating Companies, has billed Beehive the tariffed charges for the services requested by, and provided to, Beehive under the SMS/800 Tariff.

11. Beehive has failed to pay when due the service charges and late payment/interest charges for services provided under the SMS/800 Tariff for the following invoices, representing service rendered during the periods indicated, in the amounts shown:

| <u>Invoice No.</u> | <u>Service Period</u> | <u>Amount</u> |
|--------------------|-------------------------|---------------|
| 09325270 | 11/15/1993 - 12/14/1993 | \$7,940.04 |
| 09401252 | 12/15/1993 - 1/14/1994 | \$7,816.36 |
| 09403092 | 1/15/1994 - 2/14/1994 | \$7,857.14 |
| 09405269 | 2/15/1994 - 3/14/1994 | \$7,887.64 |
| 09407401 | 3/15/1994 - 4/14/1994 | \$7,914.53 |
| 09409581 | 4/15/1994 - 4/26/1994 | \$3,117.60 |
| TOTAL | | \$42,533.31 |

12. SMS/800 service to Beehive was suspended on April 26, 1994, for non-payment of charges.

13. Beehive has continued to fail to pay the amounts owing, despite repeated demands for payment.

14. Interest has continued to accrue on the delinquent amounts owing for SMS/800 service, at the rates set forth in the SMS/800 Tariff.


The amount of unpaid interest from July 15, 1994 to and including March 1, 1996 is \$6,346.64, and continues to accrue at the rates set forth in the SMS/800 Tariff, Section 2.4.1(D).

15. Beehive is indebted to DSMI, as agent for the Bell Operating Companies, for the unpaid charges for SMS/800 service and interest in the amounts alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendant in the amount of \$48,879.95, plus additional prejudgment and postjudgment interest thereon as authorized by law, for reasonable attorney fees as authorized by law, for costs of court, and for such further relief as the Court deems proper.

Dated this 1st day of March, 1996.

RAY, QUINNEY & NEBEKER

By 
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FILED

U.S. DISTRICT COURT
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DATABASE SERVICE
MANAGEMENT, INC.,
a New Jersey corporation,

Plaintiff,

vs.

BEEHIVE TELEPHONE
COMPANY, INC.,
a Utah corporation,

Defendant.

ANSWER AND
AMENDED COUNTERCLAIM

Civil No. 2-96-CV-188-J

Judge Bruce S. Jenkins

WJH

Defendant Beehive Telephone Company, Inc. ("Beehive"), through its undersigned counsel, answers the complaint of the Plaintiff, Database Management Services, Inc. ("Plaintiff" or "DSMI"), as follows.

1. Admits the allegations of paragraph 1.
2. Admits the allegations of paragraph 2.
3. Admits the allegations of paragraph 3.
4. Admits the allegations of paragraph 4.

5. Admits that the Bell Operating Companies ("BOCs"), on behalf of Bell Communications Research, Inc. ("Bellcore") and Plaintiff, filed what was styled as a certain tariff with the Federal Communications Commission ("FCC"), which tariff is known as the 800 Management System (SMS) Functions Tariff No. 1 ("SMS/800 Tariff"), but denies that such tariff is lawful, or that it was lawfully filed, and further denies that the Communications Act of 1934, 47 U.S.C. sections 151, et seq., authorizes the BOCs to file such a tariff inasmuch as they do not act jointly as a "common carrier" under the Communications Act, and the service provided pursuant to the SMS/800 Tariff is not a "communications service" or "common carriage" as defined by the statute.

6. Admits the allegations of paragraph 6.
7. Admits the allegation in paragraph 7 that Plaintiff is an agent for the BOCs through their wholly-owned subsidiary, Bellcore.
8. Admits the allegations of paragraph 8.

9. Denies the allegations of paragraph 9 to the extent they imply that Beehive voluntarily "subscribed" to any services offered by Plaintiff.

10. Admits that Plaintiff has billed Beehive for various amounts as alleged in paragraph 10, but denies that Beehive voluntarily subscribed to Plaintiff for any services, denies that Beehive sought or needed any of Plaintiff's services, and further denies that Beehive has any lawful obligation to pay Plaintiff under its SMS/800 Tariff.

11. Admits that Plaintiff has billed to Beehive the amounts stated in paragraph 11, but denies that such amounts represent any lawful obligation of Beehive under the SMS/800 Tariff.

12. Admits the allegations of paragraph 12.

13. Admits that Beehive has refused to pay the amounts to Plaintiff which are the subject of the instant complaint under the SMS/800 Tariff, as alleged in paragraph 13, based upon a good-faith belief that the SMS/800 Tariff is unlawful and unreasonable.

14. Denies that Plaintiff is entitled to interest, as alleged in paragraph 14, on any amount billed to Beehive under an unlawful and unreasonable tariff.

15. Denies the allegations of paragraph 15, and further denies that Plaintiff is entitled to any prejudgment or postjudgment interest, or to its attorneys' fees.

AFFIRMATIVE DEFENSES

16. The Plaintiff has failed to state a claim upon which relief may be lawfully granted.

17. The Plaintiff seeks to recover amounts billed under a tariff which the FCC had no lawful authority to accept. Beehive's claims of tariff unlawfulness include, but are not limited to, the following:

a. The FCC lacks jurisdiction under the Communications Act to treat access to the 800 Service Management System ("SMS/800") as a communications common carrier offering subject to regulation under Title II of the Act.

b. The FCC could not lawfully allow a schedule of charges for SMS/800 access to be filed under section 203(a) of the Act, inasmuch as the schedule did not and does not show any charges for the issuing carriers for services between different points on their own (or any) system.

c. The FCC unlawfully held that SMS/800 access can be offered under both a tariff and private contracts without making an unreasonable discrimination in violation of section 202(a) of the Act, if such services are common carriage insofar as they are incidental to the same (800 transmission service) common carrier service.

d. The tariffed rates for SMS/800 services were and are unjust and unreasonable, in violation of section 201(b) of the Act, inasmuch as the rate charged by the issuing carriers were not related to their costs, but to the revenue requirements of DSMI, an unregulated entity.

18. Beehive's complaints of tariff unlawfulness are currently on appeal to the D. C. Circuit Court of Appeals in Case No. 95-1479. On April 5, 1996, the FCC filed a motion with the Circuit Court of Appeals requesting that the case be remanded for further

proceedings before the FCC. No ruling has yet issued on that request, and the case is set for oral argument on September 9, 1996, unless the Court remands.

19. On June 5, 1996, Beehive paid Plaintiff the sum of \$48,879.95, under protest, which is the amount, including interest, sought by Plaintiff in the complaint herein.

AMENDED COUNTERCLAIM

20. Wherever an allegation in this amended counterclaim is deemed to be inconsistent with an allegation in the answer or with an allegation elsewhere in the amended counterclaim, then such inconsistent allegation is intended as being pled in the alternative as permitted under the Federal Rules of Civil Procedure.

21. Beehive is a Utah corporation operating as a public utility certificated to provide telephone service within the state of Utah by the Utah Public Service Commission. Its principal place of business is in Salt Lake City. Beehive also is classified as a "carrier" for purposes of the FCC, and is a "local exchange carrier" ("LEC") under the federal Communications Act, 47 U.S.C. section 153. The Plaintiff in this action, DSMI, is a New Jersey corporation which has its principal place of business in New Jersey. DSMI is a wholly-owned subsidiary of Bellcore, which is a Delaware corporation that is wholly and jointly owned by the 7 BOCs, which are: Bell Atlantic Telephone Companies; BellSouth Telecommunications, Inc.; Southwestern Bell Telephone Company; the NYNEX Telephone Companies; Pacific Bell and Nevada Bell; and U.S. West Communications, Inc.

22. This amended counterclaim involves a claim or claims for service which DSMI refuses to provide to Beehive under a tariff filed with the FCC; accordingly, this amended

counterclaim arises under the laws of the United States, and this Court has subject matter jurisdiction of the amended counterclaim under 28 U.S.C. section 1331. This amended counterclaim involves a claim or claims concerning the legality and propriety of FCC action, inaction, interpretation, and administration under the 1934 Communications Act and the 1996 Telecommunications Act, as well as a tariff allegedly derived from the same; accordingly this amended counterclaim arises under the laws of the United States, and this Court has subject matter jurisdiction of the amended counterclaim under 28 U.S.C. section 1331. This amended counterclaim involves a claim or claims concerning the legality and propriety of DSMI action, inaction, interpretation, and administration under the 1934 Communications Act and the 1996 Telecommunications Act, as well as a tariff allegedly derived from the same; accordingly, this amended counterclaim arises under the laws of the United States, and this Court has subject matter jurisdiction of the amended counterclaim under 28 U.S.C. section 1331. This amended counterclaim involves a claim under the due process clause of the Fifth Amendment of the United States Constitution; accordingly, this Court has subject matter jurisdiction of this amended counterclaim under 28 U.S.C. section 1331. Beehive also invokes the provisions of the Federal Declaratory Judgments Act, to the extent application of this statute may be necessary or appropriate to complete relief in this action. Venue is proper in this district under 28 U.S.C. section 1391.

23. At all material times the BOCs, through Bellcore and DSMI, jointly offered for sale to the public a set of services provided by the SMS/800, under a tariff filed with the

FCC pursuant to its regulatory authority under the Communications Act and pursuant to an FCC ruling in an administrative proceeding known as the CompTel Declaratory Ruling, Provision of Access for 800 Service, 8 FCC Rcd. 1423 (1993).

24. The SMS/800 is a computer-based system that manages the assignment and use of "800" numbers (i.e. telephone numbers that can be dialed in the format 1-800-xxx-xxxx, with the toll charges being assessed to the called party).

25. As agent for the BOCs and Bellcore, DSMI administers the SMS/800 system pursuant to a contract between DSMI and the BOCs.

26. Beehive has been a Responsible Organization ("RespOrg"), as defined in the SMS/800 Tariff, and for this and other reasons was permitted to reserve "800" numbers, and otherwise to function as a RespOrg and holder of "800" numbers. Beehive was authorized to use a block of 10,000 "800" numbers, all beginning with the prefix "629." A Beehive customer using a Beehive-assigned "800" number would dial 1-800-629-xxxx for access to the network. However, long before the creation of "800" number portability by the BOCs, Beehive had its own version of "800" use and portability within its own bi-state area. Beehive specifically negotiated for and obtained the right to hold and use these 629 numbers. This right to hold and use these particular numbers was negotiated for and assigned to Beehive long before the advent of the SMS/800 Tariff. After Beehive obtained the right to hold and use these 629 numbers, it made investments and extended efforts in a variety of ways in order to create good will value in the 629 numbers. These investments and efforts included, among other things, the expenditure of funds, research

and development, computer programming, engineering effort, customer relations, building competitive marketing strategies, negotiation of contracts, work before governmental agencies, and the like. As a result of these investments and efforts, Beehive in fact has created substantial good will value respecting its portfolio of 629 numbers. The 629 prefix spells MAX and this likewise enhances the good will value of these particular numbers, and allows the potential for a marketing approach built around numbers which are easily remembered, or numbers with names, or so-called vanity numbers. The legal, social, and economic trend toward so-called number portability, as indicated in recent legislative and regulatory developments, further confirms the good will value of these particular 629 numbers.

27. Prior to the filing of the SMS/800 Tariff, Beehive was an active participant in industry-wide meetings sponsored by Bellcore to design the BOCs' "800" number portability system. In these pre-filing meetings, Beehive continually raised its concern about its need to protect its long-established 800-629-xxxx operating system. At all such meetings, the committee agreed that Beehive would incur no charges for listing its 10,000 629-xxxx numbers in the national database. On that assurance, Beehive withdrew its objection and loaded its 10,000 629-xxxx numbers on the SMS system. From the time that the BOCs and Bellcore issued the SMS/800 Tariff (and for the first time changed the position taken in the Bellcore committee meetings),¹ Beehive has objected to it as an unlawful tariff

¹ The SMS/800 Tariff was issued March 5, 1993, with an effective date of May 1, 1993.

based upon, but not limited to, the following:

a. The FCC lacks jurisdiction under the Communications Act to treat access to SMS/800 as a communications common carrier offering services subject to regulation under Title II of the Act.

b. The FCC could not lawfully allow a schedule of charges for SMS access to be filed under section 203(a) of the Act, inasmuch as the schedule did not and does not show any charges for the issuing carriers for services between different points on their own (or any) system.

c. The FCC unlawfully held that SMS access can be offered under both a tariff and private contracts without making an unreasonable discrimination in violation of section 202(a) of the Act, if such services are common carriage insofar as they are incidental to the same (800 transmission service) common carrier service.

d. The tariffed rates for SMS services were and are unjust and unreasonable, in violation of section 201(b) of the Act, inasmuch as the rates charged by the issuing carriers were not related to their costs, but to the revenue requirements of DSMI, an unregulated entity.

28. In June 1992, Beehive filed a petition with the FCC requesting a one-year freeze on the conversion to the SMS/800 database system. Beehive had already developed its own database system, at substantial expense, for utilization of "800" numbers, and believed that it did not desire or require the SMS/800 services, and that the proposed rates and charges were unreasonable and exorbitant. The FCC denied that request in

January 1993.

29. On January 29, 1993, the FCC issued orders in its rulemaking proceeding which established rate structure and pricing rules for 800 database access services. The FCC refused to decide whether access to the SMS/800 was a common carrier service subject to tariffing.²

30. Ten days later, on February 10, 1993, the FCC issued a declaratory ruling that SMS/800 access to RespOrgs, such as Beehive, was a common carrier service. CompTel Declaratory Ruling, 8 FCC Rcd. at 1426. The FCC ruled that: (1) SMS/800 access to RespOrgs was a communications service because it was "incidental" to 800 database service; (2) the "better course" was to treat SMS/800 access as common carriage; (3) that SMS/800 access was a monopoly service that should be tariffed to prevent discrimination and unreasonable rates; and (4) that the BOCs or a BOC should file the SMS/800 tariff because, through Bellcore [and now DSMI] the BOCs "control" the SMS. CompTel Declaratory Ruling, 8 FCC Rcd. at 1426-27.

31. In March 1993, Beehive loaded its 10,000 "800" numbers into the SMS/800. Prior to doing so, Beehive was not informed by Bellcore that it would incur any obligation to pay charges for SMS/800 access, nor had it entered into a contract with any entity that obligated it to pay any charges resulting from the SMS/800 access.

32. The BOCs filed the SMS/800 Tariff on March 15, 1993. On April 28, 1993, responding to petitions filed by MCI and others to reject the SMS/800 Tariff, the FCC's

² See Provision of Access for 800 Service, 8 FCC Rcd. at 909.

Common Carrier Bureau (the "Bureau") instituted an investigation, under section 204(a) of the Act, 47 U.S.C. section 204(a), to determine whether the underlying cost allocations, resulting rate levels, and terms of the SMS/800 Tariff were lawful. See Tariff Investigation I, 8 FCC Rcd. at 3243. The Bureau placed the burden of proof on the BOCs to show that they had "establish[ed] rates for the services provided to the [RespOrgs] that reasonably reflect their cost of service." Tariff Investigation II, 8 FCC Rcd. at 5137. The SMS/800 Tariff investigation is still ongoing.

33. DSMI was incorporated on April 29, 1993. Since May 1, 1993, DSMI has handled the day-to-day business management activities associated with the SMS/800. The SMS/800 database itself is administered by Southwestern Bell Telephone Company, one of the regional BOCs.

34. Despite the Bureau's investigation, the SMS/800 Tariff went into effect on May 1, 1993. Beehive was given its unique RespOrg identification number of BHV 01. In June 1993, DSMI began billing Beehive approximately \$7,500 a month for SMS services. Beehive promptly notified DSMI that it objected to the charges, and, in July 1993, DSMI threatened to terminate Beehive's access to the SMS/800.

35. In August 1993, Beehive informally complained to the Bureau about DSMI's exorbitant charges and, in October 1993, Beehive attempted to intervene in the Bureau's SMS/800 Tariff Investigation. However, in November 1993, the Bureau dismissed Beehive from the tariff investigation proceeding on the grounds that Beehive's allegations were appropriate for the FCC's formal complaint process. See 800 Data Base Access Tariffs

and the 800 Service Management System Tariff, 8 FCC Rcd. at 8176.

36. The SMS/800 Tariff provides for good faith negotiations to resolve billing disputes. Nevertheless, DSMI refused to negotiate a settlement of the dispute with Beehive. When the Bureau staff would not intercede, Beehive paid Bellcore \$42,768.90 under protest in December 1993. In March 1994, Beehive made its final (to that point) payment to DSMI. DSMI suspended its SMS/800 service to Beehive on April 26, 1994, alleging non-payment of charges.

37. In March 1994, Beehive filed its formal complaint against the BOCs with the FCC. In addition to the issues cited in paragraph 27 above, Beehive challenged the holding of CompTel Declaratory Ruling, and it argued that the ruling was invalid under the federal Administrative Procedures Act.

38. On August 16, 1995, the FCC issued its ruling on Beehive's formal complaint. The FCC ruled against Beehive on all issues. On September 15, 1995, Beehive timely filed its notice of appeal, on all of the issues stated above, with the D.C. Circuit Court of Appeals.

39. The proceeding before the D.C. Circuit Court of Appeals has gone forward, and oral argument was scheduled for September 9, 1996. On April 5, 1996, the FCC filed a motion with the Court of Appeals asking that the case be remanded to the FCC for further proceedings.

40. On February 8, 1996, Congress enacted the Telecommunications Act of 1996 ("1996 Act" or "1996 Telecommunications Act") to provide for a pro-competitive,

deregulatory policy framework for telecommunications, to which DSMI, as the agent of the BOCs, as well as the SMS/800 Tariff, are now subject.

41. On March 6, 1996, knowing that Beehive's appeal regarding the legality of the SMS/800 Tariff and the lawfulness of the charges thereunder was proceeding before the D.C. Circuit Court of Appeals, DSMI filed its suit in this case to collect payment of monies allegedly owed by Beehive under the SMS/800 Tariff.

42. Beehive responded by filing a Motion to Dismiss or in the Alternative to Stay the Action pending a resolution of the legal issues by the D.C. Circuit Court of Appeals. No decision has issued on that Motion, and by Stipulation the parties had agreed that Beehive would file its rebuttal memorandum to that of DSMI on June 7, 1996. The initial pretrial conference was scheduled before Magistrate Alba on June 24, 1996.

43. Although DSMI suspended Beehive in April 1994, Beehive still had the use of the 10,000 "800" numbers it had been issued, and DSMI had done nothing to deprive Beehive of the use of these numbers. Thus, the status quo between the parties was maintained.

44. Because the Beehive system can operate independently of the SMS/800 system and database, Beehive could continue to make use of the 629-xxxx numbers it had historically been authorized to use and bypass the SMS/800 system. These numbers have been used by Beehive's customers and by Beehive itself in a variety of uses, including without limitation for various administrative, alarm, and maintenance functions upon which the 14 Beehive exchanges depend for their operational capability.

45. On May 20, 1996, Beehive filed comments in the FCC's rulemaking proceeding to implement the local competition provisions of the 1996 Telecommunications Act. Beehive argued that the 1996 Act disqualified DSMI from administering "800" numbers, and precluded the use of the SMS/800 Tariff to recover the costs of "800" number administration.

46. Beehive discovered on May 30, 1996, that DSMI had begun disconnecting and repossessing all "800" numbers assigned to Beehive. DSMI later informed Beehive that this disconnection and repossession process had begun at the instruction of the BOCs. This disconnection and repossession of numbers will not only destroy the ability of Beehive's customers to make use of them, but also threatens the operational capability of Beehive's entire telephone system.

47. Beehive operates exchanges in isolated parts of rural Utah, and the system extends from Beehive's main switch in Wendover, Utah, to exchanges in Box Elder, Toole, Juab, Millard, Garfield, Wayne, and Kane counties. A sister company in Nevada uses the Wendover switch and Beehive's "800" numbers in connection with Beehive Telephone Nevada's exchanges in Elko and White Pine counties. The disconnections and repossessions undertaken by DSMI, if unabated, will result in the reassignment of the 10,000 Beehive 629-xxxx numbers to the BOCs. The disconnections and repossessions will destroy contracts between Beehive and customers which are built around these numbers. It will destroy the good will value of these numbers to Beehive, including the substantial investment in time and money and effort which Beehive has made in the development of

a system and market for these numbers. It may destroy or impair the operational integrity of the entire Beehive communications enterprise.

48. DSMI's actions were a retaliation against Beehive because of Beehive's exercise of its statutory right to object to the SMS/800 Tariff and to the eligibility of DSMI to administer the 800 numbering system. DSMI's willful disconnections and repossessions transformed this dispute from a somewhat esoteric issue of federal telecommunications law to one of Beehive's corporate survival almost overnight.

49. On June 4, 1996, Beehive Fedexed a certified check to DSMI in the amount of \$48,879.95, under protest, which is the entire amount sought by DSMI in the instant complaint, including interest. DSMI took delivery of this certified check on June 5, 1996, according to Fedex records, at 9:15 a.m.

50. In a letter to DSMI sent with the certified check on June 4, 1996, Beehive requested that DSMI, upon receipt of the certified check, immediately cease the disconnection and repossession of Beehive's "800" numbers, that it re-connect and restore all "800" numbers it had disconnected and repossessed, and that it reinstate Beehive's status as a RespOrg. Notwithstanding this letter request, DSMI did not slow its disconnection and repossession actions, and it continued to disconnect and repossess Beehive's "800" numbers, with the attendant adverse impact upon Beehive, Beehive's relations with customers who use such "800" numbers, and the consequential destruction of Beehive's system operational capability.